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Jack E. Caveney

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LEGAL DEPARTMENT - TP12

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TINLEY PARK, IL 60477

EXAMINER

HANSEN, JAMES ORVILLE

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/780,320
Filing Date: February 17, 2004
Appellant(s): CAVENEY ET AL.

James H. Williams
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 9, 2008 appealing from the Office action mailed July 22, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is essentially correct. Appellant requests whether claim 25 is unpatentable under 102(b) over Hansson, and basically requests whether claim 1 is unpatentable under 103(a) over Hansson in view of Bullivant as evidenced by appellant's argument that dependent claims 2-10 will stand or fall with independent claim 1 [page 11, line 1 of the Brief].

Grounds of Rejection Not on Review

The following grounds of rejection have not been withdrawn by the examiner, but they are not under review on appeal because they have not been presented for review

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in the appellant's brief. The grounds of rejection designated by Hansson in view of Bullivant and further in view of Ehrenfels. The grounds of rejection designated by Hansson in view of Bullivant and further in view of Neufeld. The grounds of rejection designated by Hansson in view of Bullivant and further in view of Nelson et al. The grounds of rejection designated by Hansson in view of Bullivant and further in view of Lawrence et al. Again, appellant states on page 10 [last line] through page 11 [first line] that "Claims 1-10 will be argued as a group, and therefore, dependent claims 2-10 will stand or fall with independent claim 1".

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

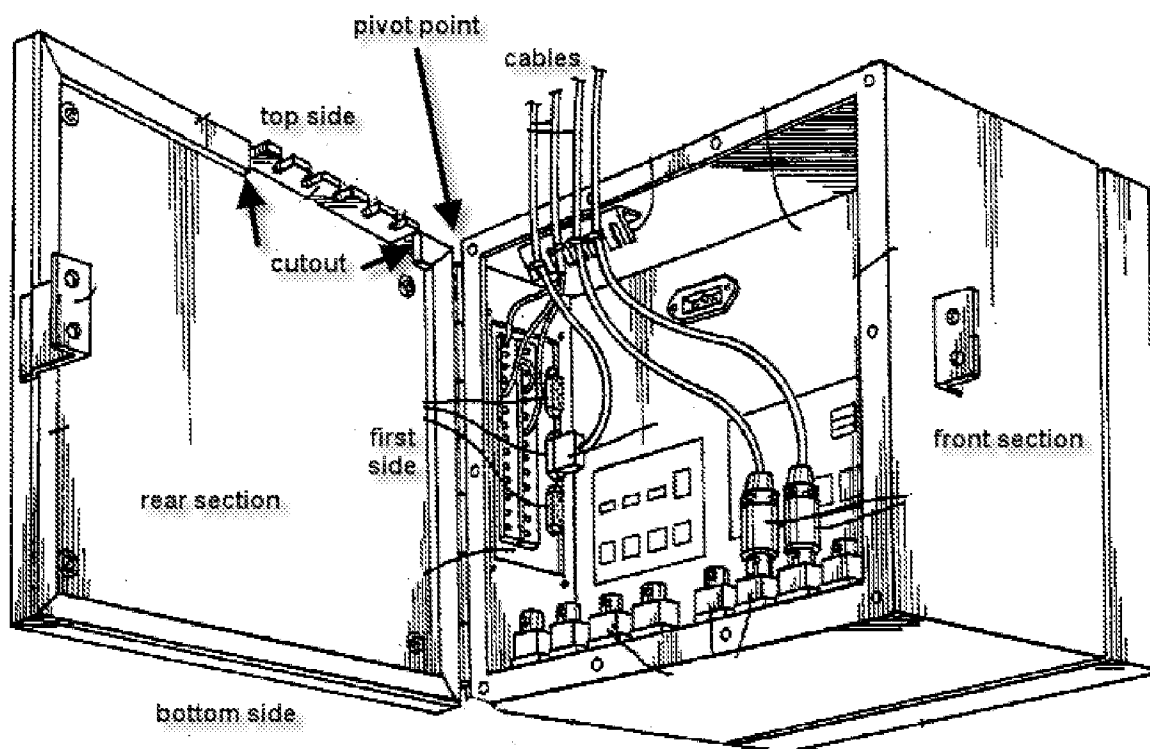
(8) Evidence Relied Upon

5,568,362	HANSSON	10-1996
5,765,698	BULLIVANT	06-1998
5,239,129	EHRENFELS	08-1993
3,623,784	NEUFELD	11-1971
6,061,966	NELSON et al.	05-2000
6,504,100	LAWRENCE et al.	01-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. **Claim 25** is rejected under 35 U.S.C. 102(b) as being anticipated by Hansson [US Patent 5,568,362]. Hansson (figures 1-5) teaches of a wall mount cabinet (shown in figs. 1 & 2, but viewed in an inverted orientation so that the wires would enter from the top as opposed to the bottom) as depicted below.

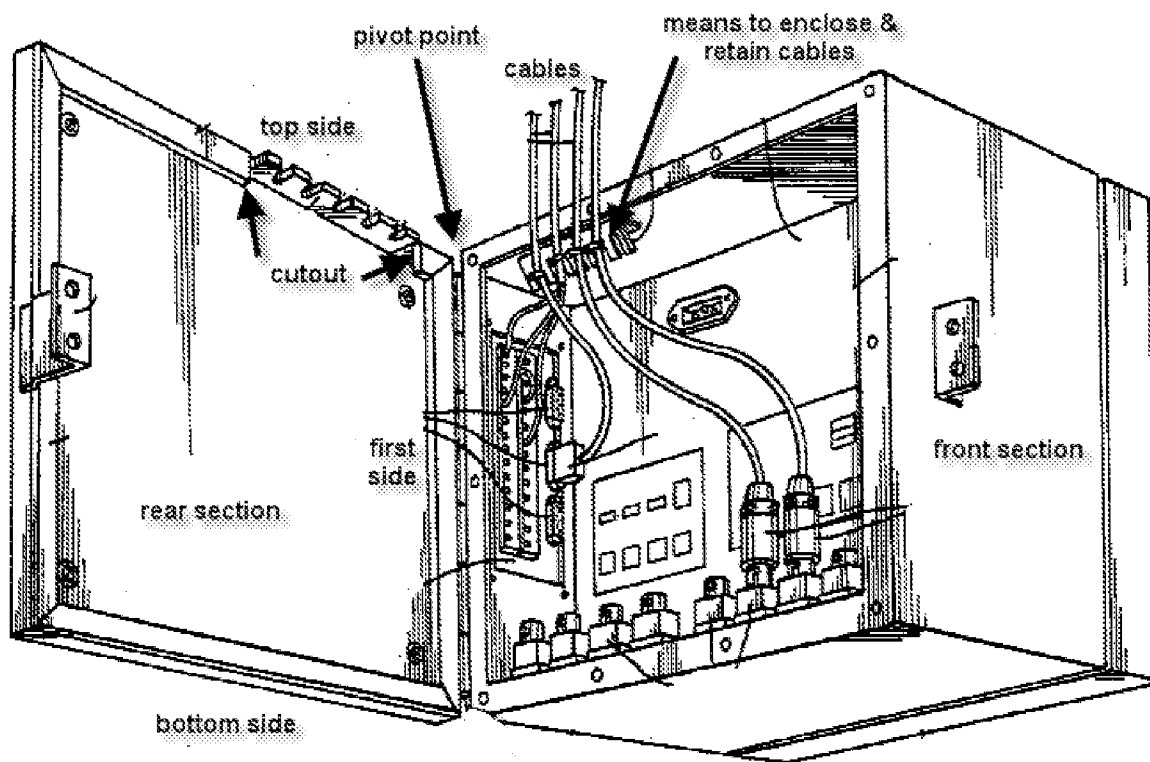


The wall mount cabinet comprising: a rear section (shown) having a top side (shown), a bottom side (shown) and a first side (hinged side - shown) between the top side and the bottom side, the rear section including a cutout (see cutout as shown) extending from the first side along a portion of the top side, wherein the cutout is adapted to receive a

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plurality of cables (shown); and a front section (shown) hingedly connected to the rear section at a pivot point (shown) immediately adjacent {depends upon viewed interpretation of what may constitute "immediate"} the cutout {it is viewed that Hansson's cutout meets the "immediately" limitation when viewing the proximity of the cutout to the hinged side with respect to the remaining structure of the cabinet, i.e., the remaining length of the rear section – cutout is closer to the hinged end as opposed to the distal end}, wherein the proximity of the pivot point to the cutout inherently minimizes movement of the plurality of cables when the front section is moved between a closed (almost closed in fig. 1) and open (fig. 2) position {as opposed to the cables being mounted on the distal side of the cabinet opposite the hinged side}.

2. **Claim 1**, along with claims 4, 7 & 9, is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansson in view of Bullivant [U.S. Patent 5,765,698]. Hansson (figures 1-5) teaches of a wall mount cabinet (shown in figs. 1 & 2, but viewed as if the cabinet was inverted so as to accommodate wires coming in from the top of the cabinet as opposed to the bottom of the cabinet) as depicted on the following page.



The wall mount cabinet comprising: a rear section (shown) having a top side (shown), a bottom side (shown) and a first side (shown - hinged side) between the top side and the bottom side, the rear section including a cutout (see cutout as shown) extending from the first side along a portion of the top side, wherein the cutout is adapted to receive a plurality of cables (shown); and a front section (shown) hingedly connected to the rear section at a pivot point (shown) immediately adjacent {depends upon viewed interpretation of what may constitute "immediate"} the cutout {it is viewed that Hansson's cutout meets the "immediately" limitation when viewing the proximity of the cutout to the hinged side with respect to the remaining structure of the cabinet, i.e., the remaining length of the rear section – cutout is closer to the hinged end as opposed to

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the distal end}, the front section having means (shown) to enclose and retain cables secured to a back edge of the front section immediately adjacent the pivot point {note “immediately” limitation comment above}, wherein the means is adapted to enclose cables, wherein the proximity of the pivot point to the cutout and the means allow the plurality of cables to rotate about the pivot point utilizing a minimum of cable movement when the front section of the cabinet is moved from a closed position to an open position. Hansson teaches appellant’s inventive claimed cabinet structure substantially as disclosed above, but does not show the “means” to enclose and retain cables as being a D-ring. Bullivant (figures 1-11) is cited as an evidence reference to show that it was known in the cable retaining art to utilize a D-ring (116) on a hinged structure (20) for the purpose of securely retaining and enclosing wires/cables while the structure is pivoted. Accordingly, the position is taken that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify / substitute the means of Hansson for a D-ring as taught by Bullivant because this arrangement would provide Hansson with a simple yet efficient way of maintaining control over a bundle of wires as the front section is pivoted between latched and unlatched positions while preventing entanglement of the cables [Bullivant - col. 4, lines 40-43].

While not argued, the following rejections are maintained by the examiner.

As to claim 4, the cabinet further comprises a front door (12a - Hansson) hingedly connected to the front section, wherein the front door includes a transparent window (shown in fig. 1). As to claim 7, the front section includes a patch panel (30 -

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Hansson) secured to a rail mounted therein so far as broadly recited. As to claim 9, the front section includes active equipment (17, 19) secured to a rail mounted therein so far as broadly recited.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hansson in view of Bullivant, and further in view of Ehrenfels [U.S. Patent 5,239,129]. The modified prior art teach appellant's inventive claimed cabinet as disclosed above, but the combined prior art does not show a transition duct positioned immediately adjacent the cutout. Ehrenfels (figures 1-12) is cited as an evidence reference to show that it was known in the electrical cabinet art to utilize a transition duct (65) positioned immediately adjacent to a cutout (39) for the purpose of concealing and protecting the wires / cables located within that are supplied to a cabinet. Accordingly, the position is taken that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate a transition duct into the cabinet assembly of the modified prior art as taught by Ehrenfels because this arrangement would provide the modified cabinet with a means to conceal the bundle of wires leading into the cabinet [aesthetically pleasing] while protecting the wires from accidental damage since they are secured within a rigid chase.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hansson in view of Bullivant, and further in view of Neufeld [U.S. Patent 3,623,784]. The modified prior art teach appellant's inventive claimed cabinet as disclosed above, but the prior art does not show two side access panels hinged to the front section. Neufeld (figures 1-4) is cited as an evidence reference to show that it was known in the cabinet

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art to utilize a pair of access panels (20) as opposed to a single panel. Accordingly, the position is taken that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate a pair of access panels hingedly connected to the front section as opposed to one access panel because this arrangement would allow selective access to the interior of the cabinet thereby a portion of the cabinet is gained without having to expose the entire cabinet's interior.

Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate an additional panel since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.; consequently, the courts have held that mere duplication of parts has no patentable significance unless a new and unexpected result is produced. *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hansson in view of Bullivant, and further in view of Nelson et al., [U.S. Patent 6,061,966]. The modified prior art teach appellant's inventive claimed cabinet as disclosed above, but the prior art does not show a rod that maintains the front section open with respect to the rear section at about 90 degrees. Nelson (figure 17) is cited as an evidence reference to show that it was known in the electrical cabinet art to utilize a rod (302) to maintain a front section (200) open with respect to a rear section (308) at about 90 degrees for the purpose of keeping the front section in a fixed position relative to the rear section. Accordingly, the position is taken that it would have been obvious to a

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person of ordinary skill in the art at the time the invention was made to incorporate a rod into the cabinet assembly of the modified prior art as taught by Nelson because this arrangement would provide the modified cabinet with a means to maintain the front section in a fixed 90 degree position relative to the rear section in order to allow an operator to gain unobstructed / unhindered access within the cabinet.

Claims 6, 8 & 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansson in view of Bullivant, and further in view of Lawrence et al., [U.S. Patent 6,504,100]. The modified prior art teach appellant's inventive claimed cabinet as disclosed above, but the prior art does not show the front section as having a slack cable manager secured to a rail, with the rail being adjustably mounted within the front section. Lawrence (figures 1-9) is cited as an evidence reference to show that it was known in the wire management art to employ a slack cable manager (40) secured to a rail (20). Accordingly, the position is taken that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the manager and rail assembly of Lawrence into the cabinet assembly of the modified prior art because this arrangement would provide the modified cabinet with an additional means to securely retain bundles of wires / cables housed within the cabinet while selectively mounting the rail within the front section affords unlimited mounting configurations due to the simplistic structure of the rail {note col. 6 of Lawrence in reference to fig. 8}.

(10) Response to Argument

Appellant appears to argue three main points relative to claims 25 and 1, along with an additional point with regards to claim 1. Appellant argues [point 1] that Hansson does not teach of a cutout that extends from the first side along a portion of the top side. As clearly depicted in the exhibits within the body of the rejections, the examiner maintains that a cutout is visible along a portion of the top side and extends from the hinged or first side when reasonably viewed in the orientation stipulated. Appellant argues [points 2 & 3] that Hansson does not show the cutout as being immediately adjacent to the pivot point, and the proximity of the pivot point to the cutout minimizes movement of the cables when the front section is moved. The examiner notes that the term "immediately" is relative in scope and may be interpreted differently depending upon the viewed orientation of the structure. The examiner has taken the position that the cutout [located on the rear section] and means capable of retaining the cables [located on the front section] are both located immediately adjacent to the hinge means [pivot point] in the sense that they are aligned closest to the hinged end as opposed to the opposite distal end. The examiner understands that the cables must exhibit some "play" when the front section is moved between open and closed positions, much like appellant's device, since some slack is desirable in order to allow the cables to be pivoted smoothly without binding. The examiner notes that as shown in fig. 5 of appellant's embodiment, when the front section (34) is pivoted to the open position {as shown}, any cables confined within ring (112) would need to be displaced a distance from the center of the ring to the center of the cutout (66) for example, which would require some slack or play

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among the cables. This displacement does not seem much less than what would be experienced with the prior art structure and is therefore deemed comparable. Since the hinged axis is not aligned along the center point of the ring itself, any discrete distance between the hinged axis and the cutout or retaining means may reasonably be viewed as immediately adjacent as long as they are **in close proximity**. Finally, appellant argues [additional point] that it would not be obvious to modify or substitute the means of Hansson in view of Bullivant's teaching of the use of D-rings to retain wiring/cables. The examiner notes that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir.1986). The Supreme Court in *KSR International Co. v. Teleflex Inc.* stated that the Federal Circuit erred when it applied the well-known teaching-suggestion-motivation (TSM) test in an overly rigid and formalistic way. Under the TSM test, a claimed invention is obvious when there is a teaching, suggestion, or motivation to combine prior art teachings. The teaching, suggestion, or motivation may be found in the prior art, in the nature of the problem, or in the knowledge of a person having ordinary skill in the art. According to the Supreme Court, the TSM test is one of a number of valid rationales that could be used to determine obviousness. It is not the only rationale that may be relied upon to support a conclusion of obviousness. Where a claimed improvement on a device or apparatus is no more than "the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement," the claim is unpatentable under 35 U.S.C.

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103(a). *Ex Parte Smith*, 83 USPQ. 2d 1509, 1518-19 (BPAI, 2007) (citing *KSR v. Teleflex*, 127 S.Ct. 1727, 1740, 82 USPQ. 2d 1385, 1396 (2007)). Appellant claims a combination that only unites old elements with no change in the respective functions of those old elements, and the combination of those elements **yields predictable results**; absent evidence that the modifications necessary to effect the combination of elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a). *Ex Parte Smith*, 83 USPQ. 2d at 1518-19 (BPAI, 2007) (citing *KSR*, 127 S.Ct. at 1740, 82 USPQ. 2d at 1396).

Accordingly, since appellant has submitted no persuasive evidence that the combination of the above elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a) because it is no more than the predictable use of prior art elements according to their established functions resulting in the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement. It appears from Hansson's disclosure that means (23) main purpose is to secure the cables once they enter the interior of the cabinet, any sealing aspect would be reserved for the sealing member (25). Additionally, it appears that when modified / substituted, the D-ring would occupy the same location as means (23) and therefore would still be in close proximity {immediately adjacent} to the hinged side. Accordingly, the position is maintained that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify / substitute the means of Hansson with the known D-ring structure as taught by Bullivant since it was known at the time that this

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structure was effective in preventing entanglement of cables mounted to a pivoting structure.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/James O. Hansen/
Primary Examiner
Technology Center 3600

Conferees:

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